

MAERTENS, et al.
Appl. No. 09/851,138
April 1, 2005

REMARKS

Reconsideration is requested.

Claims 1-62 and 64 have been canceled, without prejudice. Claims 66, 67, 68 and 70 have been amended to be dependent from claims 63 or 65. The claims have been amended to obviate the only remaining rejection which was to claim 64 and claims 66, 67, 68, 69 and 70, dependent therefrom. Specifically, the Section 112, second paragraph, rejection of claims 64, 66, 67, 68, 69 and 70, will be obviated by the above amendments. Entry of the amendments is requested to place the application in condition for allowance. The amendments do not raise further issues requiring further search and/or consideration. No new matter has been added.

Unamended Claims 63 and 65 have been noted as being in condition for allowance and a Notice of Allowance with regard to the remaining claims 63, 65, 66, 67, 68, 69 and 70, is requested.

As noted above, a first Amendment Under Rule 116 responsive to the Office Action of January 11, 2005 was filed February 9, 2005. The undersigned has not received a response from the Examiner as to whether the Amendment filed February 9, 2005 has been entered. An Advisory Action in response to the Amendment of February 9, 2005 has not been received. The undersigned spoke with the Examiner on March 30, 2005 and subsequently received telephone messages from the Examiner on March 30, 2005, indicating that the previously-withdrawn Section 102 rejection of claims 63, 64 and 65 over van Doorn (J. Hepatology July 1994, vol. 21(1), pp 122-129) would be made again in a new Office Action which reopened prosecution, and invited the applicants to amend the indicated claims to further distinguish over the cited reference,.

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The present Amendment is submitted in response, to expedite allowance of the present application. The Amendments of February 9, 2005 are repeated herein as the Examiner has not indicated the status of the Amendment of February 9, 2005 in the record.

Specifically, the undersigned understands the position with regard to the reference to be that because the 5' untranslated sequences of the cited art were determined, after the priority date of the present application, to include the claimed specific sequences, the reference inherently teaches a HCV nucleotide sequence "comprising" SEQ ID NO:51, for example. The Examiner is requested to advise the undersigned in the event this is an incorrect summary of the Examiner's position.

The applicants continue to believe that even if the above statement of the Examiner's position is correct and an accurate reflection of the cited art, the reference fails to teach an isolated HCV polynucleotide acid of the claims. The Examiner specifically required the term "isolated", for example, to overcome the Section 101 rejection of claims 63-65 and 69 stated on page 4 of the Office Action of July 28, 2004, as the Examiner asserted that to not recite "isolated" allegedly failed to distinguish the claimed invention over the naturally occurring product. There is no suggestion or specific teaching in the cited van Doorn (1994) reference that the presently claimed isolated sequences were specifically or inherently made or produced prior to the priority date of the present application. Accordingly, no further amendment of the claims to distinguish over the previously-cited art should be required.

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To advance prosecution, and without prejudice, the applicants have amended claims 63 and 65 above to further indicate that the claimed polynucleic acid does not include the 5' untranslated sequences of van Doorn (1994).


Entry of the above amendments and a Notice of Allowance are requested.

The Examiner is requested to contact the undersigned if anything further is required in this regard.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____


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